

No protest 4-27-92

Internal Revenue Service
District Director

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

Date: MAR 16 1992

Employer Identification Number:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(6) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120.

Although you have agreed to this determination by executing Form 6018, Consent to Proposed Adverse Action, dated November 30, 1991 (copy enclosed), you still have the right to protest this determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the

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[REDACTED]
EIN: [REDACTED]

Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,
[REDACTED]

[REDACTED]
District Director

Enclosures: 3

Enclosure I
Reasons for denial of exempt status

██
EIN: ██████████

Information submitted with your application shows that you were incorporated in the State of ██████ on ██████████. Your Articles of Incorporation state, in part, that your purposes are to promote the sales of ██████████ and undertake or engage in any type of advertising campaigns relating to the business of ██████████.

Your application indicates that your organization was formed by franchisees who sell chili products in restaurants located in the ██████████ region. You stated that the purpose of your organization is to engage in advertising campaigns for the benefit of all of your members and you have been engaged in this activity since ██████████. All franchisees are members of your organization and have equal rights and privileges.

You share facilities and some trustees with ██████████, the franchisor and manufacturer of the chili product. The minutes of your ██████████, board of directors meeting indicates that the board of ██████████ has the power to elect the trustees of your organization and that there must be a minimum of 3 elected members, all of which must be employed by ██████████.

Your application indicates that your sole source of financial support is an assessment to your members based on the volume of chili products purchased. All of your expenses are advertising expenses. For the year ended ██████████, you reported \$████████ in membership dues, \$████ in investment income, and \$████ in other revenue. Your expenses totaled \$████████.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues, chambers of commerce, real-estate boards, boards of trade or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common business interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance

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of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

In National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472, Ct. D. 1997, 1979-1 C.B. 198 (1979), the United States Supreme Court held that an organization of muffler dealers franchised by Midas International Corporation does not qualify for exemption from Federal income tax as a business league under section 501(c)(6) of the Code because the organization's purpose was too narrow to satisfy the line of business test of section 1.501(c)(6)-1 of the Regulations. The Court concluded that the line of business limitation of section 1.501(c)(6)-1 is well grounded in the origin of section 501(c)(6) and in its enforcement over a long period of time. The Court further concluded that exemption under section 501(c)(6) is not available to aid one group in competition with another within an industry.

The term "line of business" has been interpreted to mean either an entire industry, see American Plywood Assn. v. United States, 267 F. Supp. 830 (W.D. Wash. 1967); and National Leather & Shoe Finders Assn. v. Commissioner, 9 T.C. 121 (1947), acq. 1947-2 C.B. 3, or all components of an industry within a geographic area, see Commissioner v. Chicago Graphic Art Federation, Inc. 128 F.2d 424 (7th Cir. 1942); Crooks v. Kansas City Hay Dealers' Assn., 37 F.2d 83 (8th Cir. 1929); and Washington State Apples, Inc. v. Commissioner, 46 B.T.A. 64 (1942), acq. 1942-1 C.B. 17. Organizations that have failed to meet the line of business test but instead were found to have served only a "segment of a line" include groups composed of businesses that have licenses to a single patented product, market a certain make of automobile, or bottle one type of soft drink. These groups promote segments of an industry at the expense of others in the industry.

Revenue Ruling 67-77, 1967-1 C.B. 138, relates to whether an organization which was organized and operated for the primary purpose of financing advertising campaigns to promote the sale of a particular make of automobile is entitled to exemption under section 501(c)(6) of the Code. Membership in the organization was restricted to dealers who held franchises for the sale of a certain make of automobile in a designated area. It was formed to unite the dealers in that area and to finance general advertising campaigns which promoted the sale of automobiles, parts, and services. Its only income consisted of contributions from the dealer-members. The size of these contributions was determined by the number of automobiles purchased from the manufacturer by each member. This revenue ruling held that instead of

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engaging in activities for the improvement of business conditions in the automotive industry as a whole, the organization was performing services for its members by advertising the make of automobile sold by its members. Therefore, the organization was not entitled to exemption under section 501(c)(6) of the Code.

Based on the evidence presented, we have concluded that you do not meet the requirements for exemption under section 501(c)(6) of the Code as a business league. Your organization is identical to the situation in Revenue Ruling 67-77 cited above. You were formed to promote the sales of [REDACTED] by financing advertising campaigns to promote the sale of this product. We are of the opinion that your activities constitute the performance of services for [REDACTED], the manufacturer and franchisor of the product you promote.

We have also determined that your activities are directed towards the improvement of business conditions in only a segment of the chili industry. Your activities are limited to franchisees of [REDACTED] at the expense of its competitors and their customers.

Pursuant to the court cases cited above, the term "line of business" has been interpreted to mean either an entire industry or all components of an industry within a geographic area. The evidence presented indicates that your activities are not directed to the improvement of business conditions of one or more lines of business because you serve only one segment of a line, [REDACTED].

Accordingly, we have concluded that you do not qualify for exemption from Federal income tax under section 501(c)(6) of the Code nor do you qualify under any other section of the Code.